

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

United States of America) Cr. No. 6:09-1068-HMH
)
)
vs.)
)
Antonio Tejada-Martinez,)
)
)
Movant.)

OPINION & ORDER

This matter is before the court on Antonio Tejada-Martinez's ("Martinez") motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. Martinez pled guilty on May 4, 2010 to one count of conspiracy to distribute 50 grams or more of methamphetamine. He was sentenced to 120 months' imprisonment on October 19, 2010. Judgment was entered on November 1, 2010. In his motion, Martinez alleges that his attorney was constitutionally ineffective for failing to file an appeal as requested. (Martinez § 2255 Mot. 5.) An attorney's failure to file a direct appeal after a request from a client constitutes ineffective assistance of counsel. See United States v. Peak, 992 F.2d 39, 42 (4th Cir. 1993). When a prisoner alleges that his attorney failed to file an appeal as requested, the court has the authority to vacate the sentence and immediately reimpose and reinstate the movant's judgment of conviction to allow the prisoner to appeal. See id. Therefore, the court hereby vacates Martinez's sentence and immediately reinstates and reimposes Martinez's judgment of conviction.

It is therefore

ORDERED that Martinez's § 2255 motion is dismissed with leave to refile, his sentence is vacated, and his judgment of conviction is immediately reimposed and reinstated with the date of imposition of judgment being the filing date of this order.

IT IS SO ORDERED.

s/Henry M. Herlong, Jr.
Senior United States District Judge

Greenville, South Carolina
June 14, 2011

NOTICE OF RIGHT TO APPEAL REIMPOSED JUDGMENT OF CONVICTION

The Movant is hereby notified that he has **FOURTEEN (14)** days from the filing date of this order in which to file a notice of intent to appeal his judgment of conviction, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure. Failure to meet this deadline will waive the right to appeal.

The notice immediately below relates only to Movant's right to appeal this order and should not be confused with the fourteen-day period in which to file a notice of intent to appeal the judgment of conviction.

NOTICE OF RIGHT TO APPEAL

The Movant is hereby notified that he has the right to appeal this order within sixty (60) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.